

Separation & Divorce in Germany

Separation Agreements: Separation agreements are not very common in Germany. These agreements must be drafted and signed by a German Notary Public, and these services are very expensive. A separation agreement is generally only worthwhile when there is a lot of money and assets involved.

Divorce: To file for divorce in Germany, at least one spouse must be a legal German resident. Also, the couple *must have lived apart for at least one full year*. If the divorce is uncontested, the judge will likely grant the divorce at the initial hearing. The divorce then becomes final after the passage of one month, during which time either party can appeal the divorce (this period can be waived by both parties if both are represented by lawyers). If the divorce is contested, the judge will be looking for evidence of an irretrievable breakdown of the marriage. This breakdown is presumed if the couple have lived apart for three years, but otherwise it must be proved. The one month appeals period applies to contested divorces as well.

Retirement benefits:

A German court *cannot* divide American retirement benefits. A soldier's military retirement benefits typically remain with the soldier, therefore.

Sometimes the judge will decide to leave the issue open for subsequent agreement between the parties, but this is problematic because:

- A German contract, made when only one of the parties is German, will typically not be recognized in the United States.
- If the American courts, which can divide military retirement benefits *before* a divorce is finalized, are petitioned to do so *after* the divorce is final, they will be unable to act, since the divorced former spouse will then have no right to the ex's benefits.

The German "Package Divorce": In Germany, the judge may not just dissolve a marriage – he must also address the issues of custody, child support, spousal support, and retirement benefits (which are not considered marital property). Other issues, like division of marital property (money, bank accounts, debts, real and personal property, etc.) are only addressed if the court is petitioned to do so.

Attorney's Fees: Attorney's fees in Germany are usually much higher than in the United States, particularly for an uncontested divorce. German attorneys do not charge their clients on an hourly rate basis. Instead, their fee is based on the so-called "value of the case." This value is determined by the amount of money in dispute, or else it is fixed by the judge, who attributes a certain value to a given legal question. A strictly binding ordinance will inform the clients how much "one share of the total fee" is. Depending on the work performed, the attorney may earn one, two, or three shares (one each for counseling and paperwork, for filing the petition, and for court representation). This system permits a fairly accurate estimation of the future costs based on the initial consultation. Also, in this system the fee will be the same regardless of the attorney. It is the attorney's ethical obligation to inform his clients on the total costs of legal services to be rendered. In most instances, an attorney will require a retainer for contested cases. In smaller towns, the first counseling session is frequently free of charge, however.